



Writer's Direct Dial: (412) 562-2562
Writer's Facsimile: (412) 562-2574
Writer's E-mail: aresnick@usw.org

April 18, 2018

Re: Request for Information Concerning Representation Case Procedures

I represent the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO ("USW" or "Union"). The Union has filed petitions for elections with the National Labor Relations Board both before and after the changes to the rule governing elections ("2014 amended rules"). I write to provide information concerning the Board's representation case procedures in response to your request.

The 2014 amended rules have improved the process. They have not given an advantage to either employers or unions. Rather, they have made the process more efficient, more transparent. Our union asks the Board not to revoke or change the amendments.

In our experience under the amended rules:

1. Unnecessary litigation has been reduced and the time required for the Board to process representation petitions has been shortened.
2. The rules have been made simpler and easier for union representatives and employees to understand. This is important for unions because unions often do not use lawyers in representation cases.
3. All parties have been accorded due process.
4. Employers that wished to do so have mounted vigorous campaigns that have effectively conveyed the same types of information using the same methods as was the case prior to the amendments. The additional contact information provided to unions on the eligibility list has narrowed by a small amount the disadvantage unions have in conveying their message to employees prior to an election.
5. Employees have been better able to exercise their right to petition and to make a free choice of whether to be represented.
6. As specific examples of these points, and particularly point 1, the USW highlights four elections we participated in under the 2014 amended rules: *Nestle Prepared Foods Company*, Case 10-RC-156905; *B&H Foto & Electronics Corp.*, Case 29-RC-161854; *CaremarkPCS Pennsylvania Mail Pharmacy, L.L.C.*, Case 04-RC-197989; and *Lasership, Inc.*, Case 22-RC-205169.

In each of these cases, the parties reached an election stipulation that provided for employees in disputed job classifications to be permitted to vote subject to a post-election challenge. The parties were motivated to agree to an election stipulation by the knowledge that the 2014 amended rules provided the Regional Director the discretion to postpone determining the eligibility of disputed job classifications until after the election. Thus, the 2014 amended rules removed any incentive for the parties to avoid

agreeing to an election stipulation in favor of lengthy and expensive pre-election litigation over voter eligibility.

In *Nestle Prepared Foods Company*, Case 10-RC-156905, the parties entered into an election stipulation that identified several job classifications as part of an appropriate unit while identifying several disputed job classifications as permitted to vote subject to a post-election challenge. The Union won the election by a substantially wider margin than the number of challenged ballots, there was no post-election litigation, and thus both parties and the Region were spared the substantial cost of litigating the inclusion or exclusion of employees in the unit.

In *B&H Foto & Electronics Corp.*, Case 29-RC-161854, the parties entered into an election stipulation that identified several job classifications as part of an appropriate unit while identifying several disputed job classifications as permitted to vote subject to a post-election challenge. The Union won the election by a substantially wider margin than the number of challenged ballots, there was no post-election litigation, and thus both parties and the Region were spared the substantial cost of litigating the inclusion or exclusion of employees in the unit.

In *CaremarkPCS Pennsylvania Mail Pharmacy, L.L.C.*, Case 04-RC-197989, the parties entered into an election stipulation that identified several job classifications as part of an appropriate unit while identifying several disputed job classifications as permitted to vote subject to a post-election challenge. The Union lost by a wide enough margin that the challenged ballots were not determinative, there was no post-election litigation, and therefore both parties and the Region were spared the substantial cost of litigating the inclusion or exclusion of employees in the unit.

In *Lasership, Inc.*, Case 22-RC-205169, the parties entered into an election stipulation that identified several job classifications as part of an appropriate unit while also identifying disputed job classifications as permitted to vote subject to a post-election challenge. The Union lost by a wide enough margin that the challenged ballots were not determinative, there was no post-election litigation, and therefore both parties and the Region were spared the substantial cost of litigating the inclusion or exclusion of employees in the unit.

These cases – two which the Union won, and two which the Union lost – are consistent with the USW's experience that the 2014 amended rules have not tipped the scales in favor of either unions or employers in terms of the results of representation elections. We understand that the broader statistical picture supports this conclusion as well. Our experience, however, has been that the rules have made the process fairer, more efficient, more transparent, and less susceptible to gamesmanship that drives up litigation costs without providing any benefit to employees' exercise of free choice.

Thank you for your attention to this matter.

Sincerely,

/s/Anthony Resnick

Anthony Resnick
Assistant General Counsel